IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2734 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

BENJAMIN AMITKUMAR RAJKUMAR

Versus

GUJARAT PUBLIC SERVICE COMMISSION

Appearance:

MR GM JOSHI for Petitioner

MR DN PATEL for Respondent No. 1

MR SN SHELAT, Ld.Advocate General with Ms.Nandini Joshi, ld. AGP for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/08/2001

C.A.V. JUDGEMENT

1. Benjamin Amitkumar Rajkumar, petitioner has filed this petition praying for a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the action of the Gujarat Public Service Commission - respondent No.1 in insisting on a candidate to attempt the preliminary examination only in Gujarati in respect of subjects No.12 to 27 mentioned in para 5 of the petition and the Main Examination only in Gujarati in respect of subjects Nos. 13 to 28 as mentioned in para 6.1 of the petition. By

way of amendment, the petitioner has also prayed that this Court may declare that Rule 6 of the Gujarat Civil Services (Class-I and Class-II) Competitive Examination Rules, 2000 at Annexure "B" is violative of Articles 14, 16, 19 & 345 of the Constitution of India.

2. The facts giving rise to this petition are as under:-

2.1 Petitioner is holding the qualification of Bachelor of Dental Science (B.D.S.). Petitioner states that petitioner is born and brought up in the State of Gujarat and he understands and knows Gujarati language very well, inasmuch as he could read, write and understand Gujarati language. He submitted that he has received education all throughout in English medium, it is difficult for him to appear in an examination which is held in the language other than English in the subjects which the petitioner learnt in English during his educational career.

2.2 It has been stated that the Gujarat Public Service Commission - respondent No.1 published an advertisement No.82 inviting applications for 12 posts of Deputy Superintendent of Police Class-I, 57 posts of Sales Tax Officer, 36 posts of Mamlatdar, 36 posts of Taluka Development Officer and 35 posts of Section Officer being Class-II posts. A copy of the advertisement alongwith the form has been annexed at Annexure `A' to the petition.

2.3 It has also been stated by the petitioner that State of Gujarat in its General Administration Department, notified Gujarat Civil Services (Class-I & Class-II) Competitive Examination Rules, 2000 on 19.10.2000. This Rule provide for holding of Competitive Examinations for recruitment to the posts of Class-I & Class-II specified in Schedule I to the Rules. A copy of the Gujarat Civil Services (Class-I & Class-II) Competitive Examination Rules, 2000 has been annexed at Annexure `B' to the petition. It has been stated that as per Clause 2(c) provides definition of "examination" means the combined competitive examination for recruitment to the posts specified in Schedule I and includes of the Preliminary Examination, Main Examination and an Interview Test referred to in Rule 4. Rule 4 provides that (1) the examination shall be held in two successive stages namely Preliminary Examination (Objective Type) for selection of candidates for Main Examination and Main Examination (Written and Interview Test) for final selection of candidates for the Scheduled

posts and (2) The Preliminary Examination and Main Examination shall be held in such manner as specified in Schedule I. Rule 6 provides the medium of the examination shall be Gujarati. Sub-rule 2 of Rule 6 provides that the answers to the question paper of General English shall be given in English Language and in optional papers relating to other languages, shall be given in the respective languages. Sub-rule 3 of Rule 6 provides that the answers to questions on optional paper relating to Sanskrit Literature may be given in Sanskrit or in Gujarati. Sub-rule 4 of Rule 6 provides that the answers to questions on the paper of Geology, Agriculture, Civil Engineering, Electrical Engineering, Mechanical Engineering, Medical Science, Animal Husbandry and Veterinary Science, Management and Public Administration may be given in either Gujarati or English. Thus, except those subjects of the candidates in gujarati, the petitioner has relied upon certain provisions namely Article 343(2) which provides for continuation of English Language to be used for all the purposes of the Union for which it was being used for a period of 15 years immediately before from the commencement of the Union which period is extended from time to time, as per the information of the petitioner, and as on date english language continues to be the official language of Union of India.

2.4 He has also relied upon Article 345 which provides for adoption by a State any one or more of the languages in use in the State or Hindi as a Language or languages to be used for all or any of the official purposes of the State. He has also relied upon Article 345 particular proviso to the said Article reads as follows:

" Art.345. Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

"Provided that, until the legislature of the State otherwise provide by Law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution."

2.5 In view of the aforesaid constitutional provisions and the final examination by which the

candidates obliged to give answer paper in Gujarati, the petitioner first contended that it is not permissible by the authority to insist upon that the answer of the question of these subjects are required to be answered in Gujarati only. It is submitted that a candidate can appear and can successfully pass the Gujarati Language examination but he is not in a position to appear in the papers of other subjects which he has studied in English. He submitted that the aforesaid rules is making two groups of one in which candidate for the preliminary examination as well as the main examination can appear in either of the languages and another consisting of the subject which can be appeared only in Gujarati is artificial, unreasonable and has no reasonable nexus sought to be achieved.

2.6 He has also challenged the validity of rule 6 of the Rules. He submitted that it is a well settled position of law that English continues to be the official language of the State and therefore the petitioner has got a right to appear in the examinations held by Gujarat Public Service Commission for the purpose of selection to Class-II posts in either of the three languages namely English, Hindi, or Gujarati. He submitted that therefore providing for only Gujarati Medium as the Medium of Examination amounts to restricting the entry of the candidates by making an unreasonable classification between the candidates who can answer the questions relating to any subject in Gujarati and a candidate who has the knowledge of Gujarati. He further submitted that the administration can always insist of working knowledge of Gujarati as well as Hindi from a candidate who appears for selection to the posts to either of the classes. He further submitted that for that purpose appropriate provisions are made under the Recruitment Rules, which provide for passing of examinations of these two languages namely Gujarati and Hindi, after one is appointed on either of the posts. He has further submitted that the capacity to answer questions relating to any subject in Gujarati and knowledge of Gujarati are two different and distinct things. Insistence of later may not be branded as unreasonable but the insistence of the former would certainly be arbitrary, unreasonable, discriminatory and therefore violative of Articles 14, 16 & 19 of the Constitution of India. He submitted that conjoint reading of Rule 6 of the scheme/plan of examination and the subjects of the preliminary as well as main examination makes it clear that Rule 6 makes an unreasonable classification which would amount to hostile discrimination against the candidates who seek to attempt the papers in English language.

2.6(A) He has further submitted that with a view to illustrating the hazardous effect of the unreasonableness of Rule 6 is that the subject of Law can be selected in the Preliminary Examination as well as in the Main Examination. All the laws in India as well as in Gujarat are in English and it can be seen from the Schedule appended to the Official Languages Act of the Union as well as the State. He further submitted that there are series of judgments taking a view that in case of difficulty only the English Version of the statute would be relied upon for its true meaning and interpretation and therefore as a normal practice, it is expected of the students of law to know the law in English rather than in Gujarati. He submitted that it would be practically impossible for a person who has studied Law in English even after awarding the Degree of L.L.M. to attempt the paper of the same subject in Gujarati language. This is only illustrative and not exhaustive, the legal terminology used in two different languages would be unknown to a person who has studied the Law in English. He submitted that a person who appears for the selection for the post of Deputy Superintendent of Police must be able to read, understand and interpret the laws of the State, more particularly the penal laws which are in English language, compelling such a candidate to appear in the I-paper in Gujarati language of higher level and also answer the questions relating to Laws in Gujarati language is not only atrocious but is unreasonable, arbitrary, and again has no reasonable nexus to the object which is sought to be achieved.

2.7 In support of the aforesaid contention, the learned advocate for the petitioner has relied upon the judgment in the case of J.Pandurangarao Vs. The Andhra Pradesh Public Service Commission, Hyderabad and another reported in AIR 1963 SC 268 particularly para 16 which reads as under:

> "If the basis of the impugned rule is that a person who applies for appointment to the post of a District Munsiff, should have been enrolled as an Advocate of a High Court, that basis can be satisfied even if the person is enrolled as an Advocate not of the Andhra High Court but of any other High Court. All the High Courts have the same status, ; all of them stand for the same high traditions of the Bar and the administration of justice, and advocates enrolled in all of them are presumed to follow the same standards and to subscribe to the same spirit of serving the cause

of the administration of justice. Therefore, in our opinion, the impugned rule has introduced a classification between one class of Advocates and the rest and the said classification must be said to be irrational inasmuch as there is no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of rules. That being so, it must be held that the decision of the Andhra High Court in the case of Nallanthighal Bhaktavatsalam Iyengar (S) AIR 1956 Andhra 14 is not correct."

2.8 He has also relied upon the recent judgment of the Hon'ble Supreme Court in the case of Ganga Ram Moolchandani Vs. State of Rajasthan and another reported in 2001 AIR SCW 2596 particularly paragraphs 13 and 17 of the judgment which reads as under:

"Para 13 ..... Thus for recruitment to the post of Munsiff, there is no requirement that a person should have knowledge of local laws and regional language. If for appointment in subordinate judicial service, neither there is any requirement of knowledge of local laws nor regional language, we really fail to understand how the same is required for higher judicial service in the very same State, i.e. in the State of Rajasthan. Thus, we find that the ground taken by respondent No.2, that purpose of framing such a rule is knowledge of local law and regional language in order to stand the test of Article 14 of the Constitution, is fallacious."

"Para.17 From a perusal of these decisions, it appears that the same do not support the respondents much rather than run more counter to their submission. It has been observed that there should be no interference with the law laid down in the old decisions merely on the ground that different view is possible but the Court would be justified in interfering if decision is manifestly wrong or unfair. In the present case, we have clearly held that the Rules are violative of Articles 14 and 16 of the Constitution, as such Division Bench and Full Bench decisions of Rajasthan High Court are manifestly wrong and if the law laid down therein is approved, the same would be unfair to members of the Bar practising in all the Courts throughout the country, excepting the State of Rajasthan. Thus, we have

no option but to hold that Rules 8(ii) and 15(ii) are ultra vires Articles 14 and 16 of the Constitution and liable to be struck down."

2.9 He has also relied upon the judgment in the case of V.N.Sunanda Reddy and others Vs. State of A.P. and others reported 1995 Supp.(2) SCC 235 particularly para 14 of the judgment which reads as under:

"It must, therefore, be held that the Division Bench of the Andhra Pradesh High Court was not right when it took the view that provision of said weightage was in the interests of the State to enable it to prefer persons who were better acquainted with Telugu, being the official language of the State. With respect, the Division Bench was not justified in upsetting the contrary view expressed by the learned Single Judge B.P.Jeevan Reddy, J."

2.10 He submitted that in view of the same, the present rule is unreasonable and violative of Articles 14 and 16 of the Constitution of India. When the State Government insisting that a candidate must answer other subjects only in Gujarati put an unreasonable restriction on the right of the candidate to appear in the examination.

3. On the other hand, Shri S.N.Shelat, learned Advocate General with Ms.Nandini Joshi, learned AGP appeared on behalf of the State of Gujarat. He has relied upon List II of Seventh Schedule of the Constitution. Entry 41 of List II which provides State "Public Service/ State Public Service Commission". He has also referred to Article 309 of the Constitution of India which provides recruitment and conditions of service of persons serving the Union or a State. He has also referred to the fact that in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India.

3.1 The learned Advocate General has relied upon the affidavit-in-reply filed on behalf of the Under Secretary, Government of Gujarat in this behalf. From the affidavit he submitted that Part 17 of our Constitution deals with official language. Chapter 1 deals with language of Union (Article 343, 344). Chapter 2 deals with the original languages (Article 345 and 347). Chapter 4 deals with special directives. He submitted that in view of this constitutional provisions under Article 345 the State may by law adopt any one or

more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State.

3.2 He therefore submitted that on formation of the present Gujarat State on 1st May 1960 the State legislature had taken policy decision declaring Hindi and Gujarati as official language of the state administration by passing Gujarati Official Languages Act on 15th February, 1961. He further stated that the State decided to function in gujarati language and thereafter phased programme was formulated from 1st May, 1965 with a view to achieving progressive wide spread use of official languages in every field and every level of the State administration a series of necessary steps were taken for its implementations right from the formation of the Gujarat State on 1st May 1960 till today decisions and directions of the Government have been issued through about number of Resolutions/Circulars with reference to the implementation of Gujarati language in the State Administration. A State level committee was constituted under Chairmanship of Prof. Ramlalbhai Parikh, M.P. vide Government Resolution, General Administration Department dated 22nd June, 1977. This Committee submitted its report to the State Government on 30th June, 1978. This Committee has made in all 90 recommendations on 15 aspects in its report keeping in view that the entire business of all Government and Sem-Government organizations may be carried out properly and soundly in official language i.e. Gujarati.

3.2(A) The Governor of Gujarat hereby framed the following rules, namely the Gujarat Civil Services Recruitment (Examination) Rules, 1980. He submitted that in the said Rules particularly Rule 17 provides that the medium of the examination shall be Gujarati, provided that answers to question on the paper in General English shall be given only in English language and on optional papers regarding other languages, shall be given in those languages and also provided that answers to question on the paper `Applied Mechanics' may be given in Gujarati or English. He has also relied upon the Gujarat Civil Services (Class -I and Class-II), Competitive Rules 2000, particularly Rule 6 of the said Rules. He submitted that the candidate has no fundamental right to write down answer paper only in that particular English medium. The petitioner has no legal right and therefore present petition filed by the petitioner is not maintainable at law.

3.3 In support of the aforesaid contentions, he has

relied upon the following judgments:

3.3(A) He has also relied upon the judgment in the case of J. Pandurangarao Vs. The Andhra Pradesh Public Service Commission, Hyderabad and another reported in AIR 1963 SC 268 particularly para 8 which reads as under:

"The object of the rule is to recruit suitable and proper persons to the Judicial Service in the State of Andhra with a view to secure fair and efficient administration of justice, and so, there can be no doubt that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said service. Knowledge of local laws as well as knowledge of the regional language and adequate experience at the bar may be prescribed as qualifications which the applicants must satisfy before they apply for the post."

3.4 In the case of Hindu Hitrakshak Samiti and others Vs. Union of India and others reported in AIR 1990 SC 851, particularly para 9 which reads as under:

"In the background of the facts and the circumstances of the case and the nature of controversy that the arisen, we are of the opinion that proper and appropriate remedy in a situation where enforcement of the right depends upon the acceptance of a policy of examination for admission in any particular language to the Institution on that basis, is a matter of policy. Whether in particular facts and the circumstances of this case admission to medical or dental Institution by conducting examination in Hindi or other regional languages would be appropriate or desirable or not, is a matter on which debate is possible and the acceptance of one view over the other involves a policy decision. It cannot be appropriately dealt with by this Court, and order under Art.32 of the Constitution in those circumstances would not be an appropriate remedy."

3.5 In the case of State of Karnataka and others Vs. Channagioraoi Taluka Urdu Schools Betterment Committee and others reported in AIR 1994 SC 1702, particularly para 25 and 26 of the said judgment which reads as under:

"Para 25. As rightly contended by the learned

Advocate General where the State by means of the impugned G.O. desires to bring about academic discipline as a regulatory measure it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere."

"Para 26. In a matter relating to policy this Court should decline to interfere. In the result, we conclude the writ petition is devoid of merits and is accordingly dismissed."

3.6 In the case of P. Raghunadha Rao Vs. the State of Orissa and another reported in AIR 1955 Orissa 113, particularly para 9 of the said judgment which reads as under:

"But the question is whether the rules purpot to debar persons who are not residents of the State from applying for appointment in the State. It should be noticed that neither Art.15 nor 16 prohibits restrictions being imposed on grounds of language qualification. On the other hand, Art.29 saves the cultural and educational rights of any section of citizens residing in any part of India. The effect of the Government Resolutions referred to above is only to prescribe a language test as a necessary condition for entry into Government service. It is, therefore, open to any citizen to get himself qualified by satisfying the language test. The rule does not purpot to discriminate one citizen against another, and the test is applicable to all applicants. The need for the rule is apparent specially when we remember that the English language is being replaced in educational institutions and administration is being carried on through the regional language. The State is entitled to select only eligible candidates for employment under it, and in the process of selection those who fail to satisfy the required qualifications are bound to be eliminated from selection. But the opportunity is given to all and it cannot be said that the rule is discriminatory in its operation against a particular citizen or particular classes of citizens."

3.7 He has also relied upon the judgment in the case of Sunil K.R. Sahastrabudhey Vs. Director, I.I.T. Kanpur reported in AIR 1982 Allahabad 398 particularly

paragraphs 12 and 18 which reads as under:

"Para 12. The Article of the Constitution relied upon by the petitioner is Article 19(1)(a), which provides that all citizens shall have the right to freedom of speech and expression. It is from this right of expression that the counsel urged that the petitioner had the right to submit his thesis in Hindi. The right of expression conferred by Article 19(1)(a) cannot be extended to the conferment of right on a citizen to read and study in a particular language that he wants. The right of expression has a different meaning and is not open for being adopted in the language other than that which is the medium of instruction in the College where admission is sought. Reference in this connection may be made to Arts. 29 and 30."

"Para 18. Article 345 provides that the State can adopt by legislation any one or more of the languages for use in the State or Hindi as the language or languages to be used for all or any of the official purposes of the State. Under this Article, therefore, that language which is adopted by the State must be used for official purposes. The mere fact of adopting a language by a State as the Official language would not entitle any student to receive education in that language and not in the one which is the medium of instruction adopted by the institution. Although Hindi has been declared as the national language, no student getting education in an institution run under a Central Act can force the institution to impart education to him in Hindi in Devnagri script. It is for the Government concerned to make suitable amendments in the law which may compel the institution to impart education in the national language."

3.8 He has also relied upon the judgment in the case of Krishnan Kakkanth Vs. Government of Kerala and others reported in AIR 1997 SC 128 particularly para 34 which reads as under:

"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a

> better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demostrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reasons whatsoever or it suffers from the vice of discrimination or infringes any statue or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid "embarking on uncharted ocean of public policy."

3.9 In view of the same, he submitted that the working of the subject in the gujarati language is essential as Government issued circulars/notifications all in Gujarati and namely all orders will be passed in Gujarati language and therefore it is essential that the candidate must have knowledge of gujarati language in this behalf.

4. In my view the argument of the petitioner can also be considered in the different aspect. Part 17 of our Constitution deals with official language. Chapter 1 deals with language of Union (Article 343, 344). Article 345 provides official language or languages of a State. This article empowers the legislature of the State to adopt Hindi or any State language as official language of that State. In this behalf the State legislature has also provided under rules that examination has to be in gujarati. Article 346 provides official language for communication between one State and another or between a State and the Union. Article 347 provides special provision relating to language spoken by a section of the population of a State. Article 350 provides language to be used in representations for redress of grievances. Article 350-A provides facilities for instruction in mother tongue at primary stage. Article 351 provides for directive for development of the Hindi language. All these articles also lead to the conclusion that the State legislature has power to prescribe and enact the law and by that law can prescribe that the State to adopt any official language of the State. As indicated earlier the State of Gujarat has prescribed Guajarati as official language so State can prescribe that candidates in competitive examination has to answer book in Gujarati language.

4.1 I have considered the submissions of the learned advocate for the petitioner and the authorities cited by him. I have also considered the submissions of the learned Advocate General and also the authorities cited by him. In my view the legislature can perfectly prescribed that in the civil services the examination can be answered in certain subjects in gujarati only. In my view whether to prescribe language gujarati for examination point of view is a question of policy concerned of the Government. The question of policy is essentially for the State to decide. Such policy depends upon a number of circumstances and it is neither desirable nor advisable for the courts to direct or sermonize the Government to adopt a particular policy which the Court deems fit and proper. In short, the Court cannot be propelled into the unchartered ocean of Government policy. (Re. Bennet Coleman Vs. Union of India reported in (1972) 2 SCC 788 : AIR 1973 SC 106).

4.2 In my view, the petitioner has neither fundamental right nor legal right that he can answer only in english language and not in gujarati language. In my view when the Government has already passed the Gujarati Official Languages Act on 15th February, 1961 and started functioning in Gujarati and thereafter phased programme was formulated from 1st May, 1965 with a view to achieving progressive wide spread use of official languages in every field and every level of the State Administration a series of necessary steps were taken for its implementations. In my view right from the formation of the Gujarat State on 1st May, 1960 till today decisions and directions of the Government have been issued through about number of Resolutions/Circulars with reference to the implementation of Gujarati language in the State Administration. As the State Government has taken a policy decision that entire business of all Government and Semi-Government organizations may be carried out properly and soundly in regional language i.e. Gujarati and when Government accepted recommendation of Committee and Government has also issued resolutions and taken decision that all Competitive Examinations whether written or oral should be in Gujarati medium, there is no need of giving option of Hindi or English in the Public Service Commission. In my view therefore the contention raised by the petitioner has no substance and Rule 6 provides proper safeguards and it has prescribed that in certain papers candidates can answer in english language and the said rules has valid classification and the said rules cannot be declared as arbitrary, illegal or violative of Article 14 of the Constitution of India. In fact there cannot be

any alleged violative act because the rules applies to all persons who are entering in examination and therefore there is no discrimination in this behalf.

5. In view of the discussions made hereinabove, the petition is dismissed with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

syed/